

ESTTA Tracking number: **ESTTA427603**Filing date: **08/29/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Spine View, Inc.
Granted to Date of previous extension	08/28/2011
Address	48810 Kato Road, Suite 100E Fremont, CA 94538 UNITED STATES

Attorney information	Jennifer Lee Taylor Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482 UNITED STATES jtaylor@mofo.com, jkripke@mofo.com, mmcdaniel@mofo.com, dpung@mofo.com
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Applicant Information

Application No	77968789	Publication date	03/01/2011
Opposition Filing Date	08/29/2011	Opposition Period Ends	08/28/2011
Applicant	SpineFrontier, Inc. 500 Cummings Center, Suite 3500 Beverly, MA 01915 UNITED STATES		

Goods/Services Affected by Opposition


Class 010. All goods and services in the class are opposed, namely: Orthopedic spinal implants consisting of artificial materials and surgical orthopedic instruments to facilitate the implantation of orthopedic spinal implants

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3934902	Application Date	01/09/2009
Registration Date	03/22/2011	Foreign Priority Date	NONE
Word Mark	ENVUE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2010/08/13 First Use In Commerce: 2010/08/13 Endoscopic cannulae

Attachments	77646567#TMSN.jpeg (1 page)(bytes) INVUE_Opposition.pdf (16 pages)(526472 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer Lee Taylor/
Name	Jennifer Lee Taylor
Date	08/29/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SPINE VIEW, INC.,

Opposer,

vs.

SPINEFRONTIER, INC.,

Applicant.

Opposition No.: TO BE ASSIGNED

Application No.: 77/968,789

Mark: INVUE

Filed on March 25, 2010

Published for Opposition on March 1, 2011

NOTICE OF OPPOSITION

Box TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Spine View, Inc. (“Opposer”), a California corporation having its principal place of business at 48810 Kato Road, Suite 100E, Fremont, California 94538 believes that it will be damaged by registration of the mark shown in U.S. Application Serial No. 77/968,789, and hereby opposes the same.

As grounds for the opposition, it is alleged as follows:

1. Opposer develops and offers medical instruments that are used in endoscopic, minimally invasive, and open spinal surgery. Neurosurgeons and orthopedic spine surgeons use Opposer’s products to treat patients, as do interventional spine specialists, including anesthesiologists, physiatrists, radiologists, and spinal surgeons.

2. Opposer has continuously used the ENVUE mark in commerce in connection with its development, promotion, and sale of medical instruments that are used in endoscopic, minimally invasive, and open spinal surgery since at least as early as August 13, 2010.

3. Opposer owns U.S. Registration No. 3,934,902 for ENVUE for “endoscopic cannulae” in Class 10 (the “ENVUE Registration”). Opposer filed the application that matured into the ENVUE Registration on January 9, 2009, and the ENVUE Registration issued on March 22, 2011. Opposer owns the mark covered by the registration, the registration itself, and the goodwill and reputation of the goods connected with and symbolized by the mark in the registration. Attached hereto as Exhibit A are true and correct copies of Opposer’s registration certificate, Assignment record, and the TARR status report for U.S. Registration No. 3,934,902.

4. SpineFrontier, Inc. (“Applicant”), a Delaware corporation having its principal place of business at 500 Cummings Center, Suite 3500, Beverly, MA 01915, filed U.S. Application Serial No. 77/968,789 for INVUE (the “INVUE Application”) on March 25, 2010. Attached hereto as Exhibit B is a true and correct copy of a printout of the TARR report for U.S. Application Serial No. 77/968,789 from the USPTO website.

5. The INVUE Application was published in the *Official Gazette* on March 1, 2011. Opposer obtained extensions of time to oppose the INVUE Application until August 28, 2011.

6. By its INVUE Application herein opposed, Applicant seeks to register the mark INVUE for “orthopedic spinal implants consisting of artificial materials and surgical orthopedic instruments to facilitate the implantation of orthopedic spinal implants” in Class 10.

7. Applicant filed its INVUE Application on an intent-to-use basis on March 25, 2010.

8. On information and belief, Applicant has not yet used the INVUE mark in commerce in connection with the goods identified in the INVUE Application.

9. Opposer’s constructive priority date—the filing date of the application that matured into the ENVUE Registration—is substantially prior to the filing date of the INVUE Application. Opposer filed the application that matured into the ENVUE Registration on January 9, 2009, more than a year prior to the filing date of the INVUE Application.

10. On information and belief, since prior to any use in commerce by Applicant of the INVUE mark, Opposer has continuously used the ENVUE mark in connection with its

development and sale of medical instruments that are used in endoscopic, minimally invasive, and open spinal surgery.

11. Opposer has continuously offered and promoted medical instruments that are used in endoscopic, minimally invasive, and open spinal surgery in commerce under the ENVUE mark since at least as early as August 13, 2010. Opposer's constructive first use date of the ENVUE mark is January 9, 2009, the filing date of the application that matured into the ENVUE Registration. Through continuous use and promotion of this mark, Opposer has acquired common law rights in the ENVUE mark. Opposer will continue to offer and promote these medical instruments in the United States under the ENVUE mark.

12. Applicant's INVUE mark is so similar in sight, sound, meaning, and commercial impression to Opposer's ENVUE mark as to be likely to cause confusion, or to cause mistake, or to deceive. Applicant's INVUE mark and Opposer's ENVUE mark are aurally indistinguishable, as both begin with a highly similar sound and both end with the identical VUE element. In addition, the two marks are highly similar in appearance, given that they differ only by one letter. Moreover, the marks have the same meaning, as each connotes a way of looking into something. Opposer's ENVUE mark and Applicant's INVUE mark thus create highly similar commercial impressions.

13. Applicant has applied to register its INVUE mark for "orthopedic spinal implants consisting of artificial materials and surgical orthopedic instruments to facilitate the implantation of orthopedic spinal implants" in Class 10. On information and belief, these goods are closely related to and/or complementary with the medical instruments that Opposer offers under its ENVUE mark for use in spinal surgery. On information and belief, the same physicians and healthcare professionals who use Applicant's goods to treat patients in spinal procedures are likely to use or encounter Opposer's goods to treat patients in spinal procedures, and vice versa. On information and belief, Applicant's goods, on the one hand, and Opposer's goods, on the other, will be offered through the same or similar channels of trade and will target the same or overlapping customer bases.

14. In view of the fact that Applicant's INVUE mark is very similar in sight, sound, meaning, and commercial impression to Opposer's ENVUE mark; that Applicant's goods, on the one hand, and Opposer's goods, on the other, are closely related and complementary; and that the channels of trade and customer bases for Applicant's and Opposer's respective goods appear to be the same or overlapping, Applicant's INVUE mark so resembles Opposer's ENVUE mark as to be likely to cause confusion, or to cause mistake, or to deceive. Opposer would thereby be injured by Applicant's registration of the INVUE mark.

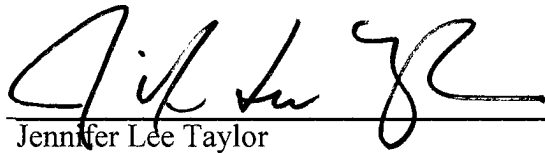
15. Filing Fee: The USPTO is authorized to charge \$300.00 for the Notice of Opposition to Morrison & Foerster LLP's Deposit Account 03-1952 (Reference No. 62795-6005501).

WHEREFORE, Opposer prays that U.S. Application Serial No. 77/968,789 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Dated: August 29, 2011

By:

Respectfully submitted,



Jennifer Lee Taylor
Attorney for Opposer
Spine View, Inc.

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522

EXHIBIT A

United States of America

United States Patent and Trademark Office

ENVUE

Reg. No. 3,934,902

Registered Mar. 22, 2011

Int. Cl.: 10

TRADEMARK

PRINCIPAL REGISTER

SPINE VIEW, INC. (CALIFORNIA CORPORATION)
48810 KATO ROAD, SUITE 100E
FREMONT, CA 94538

FOR: ENDOSCOPIC CANNULAE, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 8-13-2010; IN COMMERCE 8-13-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-646,567, FILED 1-9-2009.

LINDSEY RUBIN, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office



United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

No assignment has been recorded at the USPTO

For Serial Number: 77646567

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2
Web interface last modified: July 25, 2011 v.2.2

[HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-08-29 15:16:40 ET

Serial Number: 77646567 Assignment Information Trademark Document Retrieval

Registration Number: 3934902

Mark

ENVUE

(words only): ENVUE

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2011-03-22

Filing Date: 2009-01-09

Transformed into a National Application: No

Registration Date: 2011-03-22

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2011-02-17

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Spine View, Inc.

Address:

Spine View, Inc.

48810 Kato Road, Suite 100E
Fremont, CA 94538
United States
Legal Entity Type: Corporation
State or Country of Incorporation: California

GOODS AND/OR SERVICES

International Class: 010
Class Status: Active
Endoscopic cannulae
Basis: 1(a)
First Use Date: 2010-08-13
First Use in Commerce Date: 2010-08-13

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

USPTO Reference Number: A0023009
International Registration Number: 1066941
International Registration Date: 2011-01-28
Original Filing Date with USPTO: 2011-01-28
International Registration Status: Application For IR Registered By IB
Date of International Registration Status: 2011-03-03
International Registration Renewal Date: 2021-01-28
Irregularity Reply by Date: (DATE NOT AVAILABLE)

Madrid History:

07-07-2011 - 12:14:42 - Ceasing Of Effect Reviewed - No Action Required By Office
06-22-2011 - 08:00:55 - Partial Ceasing Of Effect To Be Processed
03-04-2011 - 08:12:46 - Application For IR Registered By IB
01-29-2011 - 21:05:31 - IR Certified And Sent To IB
01-28-2011 - 15:10:13 - New Application For IR Received
01-28-2011 - 15:10:13 - Automatically Certified

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-03-22 - Registered - Principal Register

2011-02-18 - Notice Of Acceptance Of Statement Of Use Mailed

2011-02-17 - Law Office Registration Review Completed

2011-02-17 - Assigned To LIE
2011-02-17 - Allowed for Registration - Principal Register (SOU accepted)
2011-02-09 - Statement Of Use Processing Complete
2011-01-20 - Use Amendment Filed
2011-01-20 - TEAS Statement of Use Received
2010-08-18 - Notice Of Approval Of Extension Request Mailed
2010-08-17 - Extension 2 granted
2010-07-21 - Extension 2 filed
2010-08-17 - Case Assigned To Intent To Use Paralegal
2010-07-21 - TEAS Extension Received
2010-07-13 - Applicant/Correspondence Changes (Non-Responsive) Entered
2010-07-13 - TEAS Change Of Owner Address Received
2010-01-20 - Extension 1 granted
2010-01-20 - Extension 1 filed
2010-01-20 - TEAS Extension Received
2009-07-21 - NOA Mailed - SOU Required From Applicant
2009-04-28 - Published for opposition
2009-04-08 - Notice of publication
2009-03-25 - Law Office Publication Review Completed
2009-03-24 - Assigned To LIE
2009-03-24 - Approved For Pub - Principal Register
2009-03-24 - Assigned To Examiner
2009-01-14 - Notice Of Pseudo Mark Mailed
2009-01-13 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer Lee Taylor

Correspondent

Jennifer Lee Taylor

Morrison & Foerster LLP

425 Market Street

San Francisco CA 94105-2482

Phone Number: 415 268 6538

Fax Number: 415 268 7222

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-08-29 15:18:06 ET

Serial Number: 77968789 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

INVUE

(words only): INVUE

Standard Character claim: Yes

Current Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

Date of Status: 2011-03-23

Filing Date: 2010-03-25

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 110

Attorney Assigned:
MIZELLE HOWARD DEZMONA JULYE

Current Location: 650 -Publication And Issue Section

Date In Location: 2011-01-21

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. SpineFrontier, Inc.

Address:

SpineFrontier, Inc.
500 Cummings Center, Suite 3500
Beverly, MA 01915
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware
Phone Number: 801.533.9800
Fax Number: 801.328.1707

GOODS AND/OR SERVICES

International Class: 010
Class Status: Active
Orthopedic spinal implants consisting of artificial materials and surgical orthopedic instruments to facilitate the implantation of orthopedic spinal implants
Basis: 1(b)
First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-03-23 - Extension Of Time To Oppose Received
2011-03-01 - Notice Of Publication E-Mailed
2011-03-01 - Published for opposition
2011-01-21 - Law Office Publication Review Completed
2011-01-12 - Approved For Pub - Principal Register
2010-12-22 - Teas/Email Correspondence Entered
2010-12-22 - Communication received from applicant
2010-12-22 - TEAS Request For Reconsideration Received

2010-09-30 - Notification Of Final Refusal Emailed
2010-09-30 - Final refusal e-mailed
2010-09-30 - Final Refusal Written
2010-08-10 - Teas/Email Correspondence Entered
2010-08-10 - Communication received from applicant
2010-08-10 - Assigned To LIE
2010-07-26 - TEAS Response to Office Action Received
2010-06-29 - Notification Of Non-Final Action E-Mailed
2010-06-29 - Non-final action e-mailed
2010-06-29 - Non-Final Action Written
2010-06-24 - Assigned To Examiner
2010-04-01 - Notice Of Pseudo Mark Mailed
2010-03-31 - New Application Office Supplied Data Entered In Tram
2010-03-29 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Dana L. Tangren

Correspondent

DANA L. TANGREN
WORKMAN NYDEGGER
60 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111-1004
Phone Number: 801.533.9800
Fax Number: 801.328.1707

PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on August 29, 2011, I served a copy of:

NOTICE OF OPPOSITION

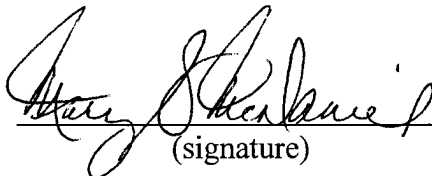
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

**Dana L. Tangren
Workman Nydegger
60 E. South Temple
Salt Lake City, UT 84111-1004**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 29th day of August 2011.

Mary S. McDaniel
(typed)


(signature)